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REPORTS

NOTES OF THE WEEK

Annual Report of the Howard League

The annual report of the Howard League for Penal Reform for the year ended June 30, shows once again that the League continues to keep in touch with current events at home and abroad and to promote interest and provide information through its many meetings and publications.

The Homicide Act has already been the target for criticism and it was not to be expected that the Howard League, which advocates the abolition of capital punishment, would be satisfied with it. A great many people share the view that there is something unsatisfactory in the position in which "a youth whose attack was not premeditated was hanged while the poisoner who carefully and deliberately plans to murder is automatically exempt from the death penalty." The reference to the youth is to the case of John Vickers.

Arising out of the *Vickers* case is the question, put in this report, of allowing an appeal to the House of Lords and whether it is right in principle that a judicial decision of this kind ought to be taken by a member of the executive. A first reading was given during the past session to a Bill designed to transfer the power of the Attorney-General to an appeals committee of the House of Lords. In the opinion of the Howard League the whole appeals procedure is in need of an overhaul.

The League finds encouragement in the fact that some of the proposals contained in its previous report relating to prison reform are being implemented, and others have received favourable consideration. One of the suggestions made in this report is that certain features of the parole system in use in the United States and some other countries should be adopted. Under this, selected prisoners might be released earlier, remaining under helpful supervision and liable to recall. One effect of this would be to reduce, in some small measure, the overcrowding of the prisons. The League is also rightly concerned with the question of more useful and profitable prison labour, which would be of benefit to both the prisoner and the taxpayer.

Publicity in Proceedings Before Examining Justices

The short memorandum of evidence submitted by the Howard League to the Departmental Committee, of which Lord Tucker is chairman, is included in the report. It calls attention to the change that has taken place in the last hundred years, so that today the widest publicity is often given to the evidence in magisterial proceedings before the committal for trial. This reaches the public including possible jurors, and may prove to be prejudicial knowledge. The publication of evidence wrongly admitted by the examining justices may prove to be extremely damaging to the accused—who by the mere fact of its exclusion in the higher court is robbed of all opportunity to contradict it. The Howard League recommends some changes in procedure not by excluding the press, but by restricting the particulars of the preliminary proceedings published in the newspapers. The public would, however, be excluded. The result of proceedings would be published.

It is not surprising that the National Union of Journalists looks at the problem from a somewhat different standpoint. According to a report in the *Manchester Guardian* the N.U.J. is opposed to any restriction on the publicity of proceedings in magistrates' courts which it regards as neither necessary nor desirable. Its memorandum asserts that where requests are made during the hearing of proceedings that certain facts should not in the public interest be published, such requests are normally respected by the press.

After calling attention to the advantages of publicity, the memorandum states that the N.U.J. cannot find any evidence that a jury has been prejudiced in its findings by the publication of evidence given before examining justices. This statement is not surprising, since it would be difficult to discover such cases if they occurred.

Court Accommodation

Said to be the first building designed to accommodate both county courts

and magistrates' courts, the new law court, magistrates' court and police headquarters at Slough were opened by the Lord Chancellor on October 4. Slough is said to be one of the busiest petty sessional divisions in the country. Lord Kilmuir said (we quote from the *Windsor, Slough and Eton Express*) that as Lord Chancellor and former Home Secretary he had appreciated the difficulty of building new courts. The administration of justice had to take its place in the queue with new schools, factories and houses, which were all needed in the past 10 years. He added that another aspect that is most important was accommodation for members of the public who are compelled to use the courts. In his opinion it was not sufficiently realized, and the legal profession was apt to under-estimate, what a nerve-racking experience it was for the ordinary person to come to court to give evidence. If to nervous tension there was added the wait in unpleasant surroundings, the chance of a tribunal getting help from the witness was damaged.

It is certainly true that in many magistrates' courts, probably in most, the accommodation for witnesses in waiting is insufficient and uncomfortable. Witnesses ought not to have to stand about in a draughty corridor or an entrance hall, but that is often their lot. The question of lavatory accommodation is sometimes not dealt with and witnesses may have to go outside to find it. Witnesses are performing a public duty and should be given every consideration. It is to be hoped that the Lord Chancellor's words will receive due attention, and that where accommodation is inadequate as much as possible will be done to improve it. In the present financial difficulties improvements may have to fall short of the ideal, but that does not mean that nothing can be done.

The Dangers of Reversing

We have written before about the difficulty a driver has, when reversing his vehicle, to be quite sure that he can do so with complete safety. In the *Liverpool Daily Post* of October 5, is a report of the successful appeal of a bus driver against a conviction for driving without due care and attention. From the report it seems that, having to reverse the vehicle, he waited until he heard the bell rung twice by the conductress. This is, apparently, a recognized and accepted signal which a conductor gives to indicate to his driver that it is safe to reverse the vehicle. When this driver was reversing in accordance with the signal he received a one bell signal to stop. There was a motor-cyclist behind the bus and in reversing the bus had grazed the legs of the cyclist and damaged the silencer of his machine. The bus driver said that in reversing he relied entirely on the signal of the conductress, and it is difficult to think what else he could have done. The appeal was allowed, the chairman saying that the committee thought the driver had acted in a reasonable way and that the accident was due to the inattention of the conductress. Had the appellant given evidence in the magistrates' court he would probably not have been convicted.

The circumstances of this case recall to mind the case of *Thornton* v. *Mitchell* [1940] 1 All E.R. 339; 104 J.P. 108. In that case a bus driver was similarly charged with careless driving when he had reversed his vehicle on a signal from the conductor, and the conductor was charged with aiding and abetting the commission of the driver's offence. The magistrates' court acquitted the driver but convicted the conductor. On his appealing against the conviction it was held that he could not be convicted of aiding and abetting the driver in what the driver had been found not guilty of doing and that he could not be convicted of the principal offence of careless driving because, on the wording of s. 12 (1) of the Act of 1930, only the driver could be guilty of that offence.

The position, although quite clear, is not satisfactory because it means, apparently, that although a negligent conductor in such circumstances is really the guilty party acting through an innocent agent, the driver, the conductor cannot be punished for his negligence.

An Altered Licence on a Parked Vehicle

A correspondent has referred to our Note of the Week "Parked Vehicles and Excise Licences" at 121 J.P.N. 605 and has called our attention to a prosecution of a man under reg. 5 of the Road Vehicles (Registration and Licensing) Regulations, 1955, when the vehicle on which the altered licence was displayed was not in use on a public road but was found standing on waste ground adjoining the defendant's residence. The regulation reads, "No person shall (either by writing, drawing or in any other manner) alter deface mutilate or add anything to any licence for any mechanically propelled vehicle or exhibit upon any mechanically propelled vehicle any licence which has been altered, defaced, mutilated or added to as aforesaid, or upon which the figures or particulars have become illegible or the colour has become altered by fading or otherwise and no person shall exhibit any colourable imitation of any licence." By s. 25 (4) of the Vehicles (Excise) Act, 1949, if any person acts in contravention of, or fails to comply with, any regulations made under this Act he shall, for each offence, be liable on summary conviction to a penalty not exceeding £20.

The prosecution in this case contended that there is nothing in reg. 5 to suggest that the vehicle must be in a public place or on a road before the exhibition of the altered licence can constitute an offence and the defendant, having first pleaded not guilty, later changed his plea to one of guilty. We agree with this view. The regulation contains an absolute prohibition of the exhibition of altered, etc., licences, and we think that there was in the case in question an exhibition of such a licence. The position is quite different from that dealt with in an earlier note referred to above in which the point in issue was whether the vehicle in question was being *used* on a public road.

Parking and Shopping

A shopkeeper at Windsor has taken an unusual step, towards ensuring what he believes to be a right of access to his premises by customers. He has bought advertisement space in a local newspaper, at a cost of £5, to explain that the street in which he carries on business is open to vehicles, not having been made the subject of any form of closing order. Not having seen the actual advertisement, but only a summary of it in the news columns of the paper, we do not know whether he has accurately set out the legal position, but his enterprise is noteworthy. His action arose from a complaint that his customers had been turned back from entering the street by car, and that in some cases the police had been aggressive in their warnings. The chief constable of Berkshire is stated in the newspaper to have agreed that *bona fide* customers might leave cars outside the shop for a reasonable time, and to have said that the police had been so instructed. On the other hand, the street is near the Castle and there has been a tendency for motorists to use it as a general parking place, for which it has not been designated under the Public Health Act, 1925. If this were

condoned, the street would become impassable for fire engines and ambulances, as well as for vehicles serving the needs of business premises and of customers, including those of the shopkeeper who has advertised the position in the local press. Both the tradesman and the chief constable are in the right, and their dispute is in a sense a storm in a tea cup, which may amount to little more than some excess of zeal or lapse from suavity on the part of a young constable. It does, however, neatly illustrate the fact that unlawful parking is the enemy of lawful trade, as well as of through traffic.

The Character of the Accused

During the hearing of an appeal in the Court of Criminal Appeal (*R.* v. *Thomas, The Times,* October 8) in which the question arose whether the jury had learned by accident about the previous convictions of the prisoner, the Lord Chief Justice recalled a case that once came before him in which the jury, before considering their verdict, asked if the prisoner had any previous convictions. Lord Goddard said he told the jury they could not be told that. In fact the man had a long list of convictions.

It is a perfectly natural question for a jury or a newly appointed magistrate to ask. In the ordinary transactions of everyday life we are influenced by a person's character when we have any suspicion about his actions. Our law wisely excludes evidence of bad character as a means of safeguarding the accused from prejudice. Of course, a magistrate learns by experience that the man with a good character is likely to plead it in his defence, especially if he is legally represented, and so silence on the point may lead him to suspect that there are previous convictions. He will not know how many or how serious the convictions are, and he will be on his guard so as not to allow his suspicions to influence him in weighing the evidence. As to a juryman, he may wonder why he is not allowed to know about such an important point, and if he is shrewd he may even draw the conclusion that there is something to hide. That cannot be helped, and on the whole the rule appears to work well enough.

Procedure under the Magistrates' Courts Act, 1957

Remarks made in a magistrates' court about the procedure under the Magistrates' Courts Act, 1957, have been widely reported in the press. According to a report in the *News Chronicle* of October 8 forms sent under the Act to defendants informing them of the effect of the Act were said by a magistrate to "seem to suggest that they would be better off by pleading guilty." The chairman is quoted as saying "They make a man put his head in a noose."

We do not think that many courts will take this view of the new procedure. Whether it will effect its real purpose, that of saving the unnecessary attendance of prosecution witnesses, remains to be seen. It must be remembered that before this procedure was suggested busy courts dealing with long lists of minor motoring summonses were accustomed to receive from defendants who had been summoned letters which stated that the offence was admitted and asked whether the defendant need attend. In spite of such a letter of admission, and the obvious desire of the defendant not to appear, the court was obliged to insist on the attendance of those witnesses for the prosecution who were necessary to prove the case before they could find the case proved. Under the Act of 1957 it is possible to give practical effect to these letters of admission from defendants and to save the attendance of the prosecution's witnesses. The forms which have been criticized are designed to ensure that defendants know about the new procedure and that they understand the effect of sending a letter admitting the offence. We do not agree, as was suggested in the case we have referred to above that the forms "indicate that it would be much better for him if he were to do so" (*i.e.*, to plead guilty).

The Act has only recently come into operation, and it should be possible before very long to form an opinion on how it is working. We shall be interested to receive from our readers any comments on this matter.

Disqualification for Offence as a Pedal Cyclist

We read in the *Manchester Guardian* of October 8 that in Northern Ireland a magistrate has decided that a pedal cyclist who holds a driving licence can be disqualified for holding such a licence as a result of a conviction of an offence committed while riding his pedal cycle. We do not know whether the Northern Ireland law on the subject is the same as it is here so we cannot comment on this decision, but we should like to deal with the position in this country.

Before the Road Traffic Act, 1956, came into force the power to disqualify, given by s. 6 of the Act of 1930, was given "to any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle," with an exception that is not here material. That part of s. 6, as amended by the Act of 1956, now reads "any court before which a person is convicted of any offence specified in the Fourth Schedule to the Road Traffic Act, 1956." When we look at sch. 4 we find that many of the offences listed there can be committed only in respect of motor vehicles, but that where they can be committed in respect of other vehicles the relevant paragraph of the schedule adds the words "committed in respect of a motor vehicle" or "committed by the driver of a motor vehicle." It is clear, therefore, that if a cyclist is convicted, as such, for an offence against for example ss. 11, 12 or 15 of the Act of 1930, as extended by s. 11 of the Act of 1956, he cannot be disqualified for holding a licence to drive a motor vehicle. The power to disqualify is given only when the offence was committed in connexion with, or by the driver of, a motor vehicle.

Evidence by View—the Radar Speed Check

At 120 J.P.N. 484 we published a note of the week on "evidence by view" and we referred to the case of *Buckingham* v. *Daily News, Ltd.* [1956] 2 All E.R. 904, in which the Court of Appeal held that in a case of that nature, which required no expert evidence, a judge was entitled to follow his own "impressions" formed at a view and to give judgment accordingly.

In *The Yorkshire Post* of October 9 is a report of a case in which a number of defendants were summoned for exceeding the speed limit, the evidence of speed being provided by readings on a radar "machine" (if that is the correct word). The magistrates adjourned the hearing of the cases whilst they went to witness a demonstration of the radar machine. Two of the magistrates were driven in a police car along a road while two others watched the radar speed meter. According to the report the chairman said, on their return to court, that they were satisfied that the device was accurate in such cases. The defendants in question were each fined £2.

It is not easy to be sure to what extent a view of a device such as this radar machine should influence a court.

We have written in these notes of cases in which this machine has been challenged on the ground that its readings can be affected, without it being possible to ascertain that it is so affected, by extraneous objects. The view of the machine could enable magistrates better to understand how it operates, but it would not enable them to form any opinion on the matter of such interference by objects other than the car under test, and they would have on that point to listen to the evidence of any experts who might be called and to give such value as they thought fit to that evidence. A view could not prove anything about the possibility of interference, because it would be impossible to be sure whether or not, at the time of the view, there was anything in the vicinity which could cause such interference.

There is nothing in the report to which we have referred to suggest that in the cases there dealt with, any expert evidence was called or that the defendants raised the question of the possibility of interference, although the matter was mentioned by the prosecuting solicitor who said, in effect, that it was not a factor that need be taken into consideration by the court.

Clean Air

No-one expected that all or most of the populous parts of the country would become smokeless areas as soon as the Clean Air Act became law. For one thing, the initial cost must be very great even although this may be offset largely by the saving to health and property resulting from the removal of impurities in the air. It is not surprising, however, that there should have been complaints at the recent annual conference of the National Smoke Abatement Society that the new law is being put into operation too slowly. (We quote from the *Manchester Guardian*). The Minister of Power (Lord Mills) called for the education of the consumer; the use of the right type of appliance for industry and the home; and adequate supplies of smokeless fuel. He told the conference that only 30 local authorities had so far submitted proposals for smoke-controlled areas. Dr. R. Lessing, in his presidential address, suggested that the time had come to seek out the source of pollution. He thought much could be done by the National Coal Board and its coal preparation schemes. The chief constable of Hastings explained the difficulties of the police in enforcing regulations which no longer required the motorist to take reasonable care not to emit smoke but only to refrain from causing damage, injury or danger by its emission. In practice this made a conviction unlikely unless the smoke was dense enough to obscure the view of other drivers. Much perturbation was caused to local authority representatives by the suggestion of Mr. G. C. Don, lecturer in Public Health at London University that the administration of the Act should be made the responsibility of joint *ad hoc* authorities, particularly in London.

At the annual meeting of the society it was decided to change its name to that of the National Society for Clean Air. Amongst the resolutions which were passed was one urging local authorities, industry, trade unions and technical schools and colleges to confer together with a view to arranging courses and examinations for boilermen.

Elderly Sick and Infirm

The Minister of Health has issued a circular to local health authorities together with a memorandum to hospital bodies containing suggestions for the improvement of the provision made for the chronic sick and elderly. These are based on a survey carried out by the Ministry in 1954–55 which was the first attempt on a national basis to assess the quality of the services to old people. A summary of the survey published by the Ministry and prepared by Dr. S. A. Boucher, O.B.E., M.A., D.M., a senior medical officer of the department, shows how much variation there is in the standard of care and degree of accommodation provided throughout the country both by local authorities and by hospital bodies. We propose in a later issue to refer to the report in some detail. The Minister has been pressed more than once to make available to the authorities concerned examples of special arrangements which have been found to work satisfactorily in some areas so that others might benefit thereby. Comparative information of this kind is usually given in the annual report of the Ministry but this is the first time that so real an attempt has been made to show what is being done and, on the contrary, how much some authorities are lagging behind. It is a sad commentary on the present state of affairs to be told that in some parts of the country co-operation is practically non-existent. There are long waiting lists both for hospital and old people's home in some areas but in other comparable areas the waiting lists are kept to the minimum by the combined use of local resources. Sometimes old people are suffering because of local jealousies and lack of confidence between one public body and another or one official and another. In some areas the procedure for admission to hospital seems to be very haphazard. For instance, one medical officer based his idea of priority on the amount of pressure applied by the general practitioner without any independent investigation or inquiry. Sometimes admissions are left to the secretary or the matron without any liaison with the local health department. Sometimes investigation by a social worker is resented by the doctors even though in other nearby areas this is welcomed. Form filling has become one of our great bugbears but surely it is going too far when no person, in one area, can be admitted to hospital until a complicated questionnaire has been completed even if the case is urgent but falls short of an accident in the street.

The Ministry has done well to issue the report but pressure will be needed if the plight of the elderly sick, to use the title of a debate in Parliament some time ago, is to be removed in some areas. Certainly the report shows that there is no room for complacency. Those who are even indirectly interested in hospitals and homes in their areas might usefully inquire what is the practice there.

Day Nurseries

Day nurseries have often been criticized because, at considerable expense to the ratepayers, they make it easier for young women to go out to work when they would be better employed in looking after their own children. The position was different during the war when married women were so necessary in industry as part of the war effort. A different kind of day nursery has, however, been established recently in Derby where (we quote from the *Manchester Guardian*) an ordinary house has been turned into playrooms and occupational therapy rooms for handicapped children. The house will be run and staffed by volunteers from the Derby and Derbyshire Society for Mentally Handicapped Children and the scheme will cost £3,000. The house will be used for children who are too young to go to occupational institutions and their mothers will be able to leave them there during the day. In the evenings older children will use

other rooms for occupational therapy and parents will be able to leave children of both age groups at the house while they do their shopping or go out.

The accommodation for children in mental deficiency hospitals and homes is so short that there are thousands of defective children who are being cared for by their harrassed mothers. In many cases they are so fond of the children that they would not let them go to an institution even if there was accommodation. The whole aim of the Derby project is to help to take the strain of worry about these children from the parents, even if only for a short time. There are similar schemes in other areas but it is believed that this project is the first of its kind which is being operated by a voluntary body. It seems worth copying elsewhere.

DISQUALIFICATION UNDER THE SCHOOL CROSSING PATROLS ACT, 1953

At 121 J.P.N. 389 in a Note of the Week we said that an omission had been noticed in the list of offences for which disqualification and endorsement can be ordered, set out at the end of an article at 120 J.P.N. 785, and we referred to s. 2 (4) of the School Crossing Patrols Act, 1953.

We understand that opinions differ on this matter and that one view is that there is power to disqualify on a first or second conviction under this Act of 1953. The argument, as we understand it, is that s. 2 (4) (*supra*) in effect amended s. 6 (1) of the Road Traffic Acts, 1930, and that when s. 26 (2) of the Road Traffic Act, 1956, substituted, in s. 6 (1) of the Act of 1930, offences set out in sch. 4 of the Act of 1956 for offences in connexion with the driving of a motor vehicle it had the same effect as if s. 2 (4) (*supra*) had been repealed.

We should like to examine this matter in detail. Before s. 26 (2) of the Act of 1956 came into force s. 6 (1) of the Act of 1930 read as follows, "Any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle (not being an offence under Part IV of this Act) may in any case, except where otherwise expressly provided by this Part of this Act, and shall where so required by this Part of this Act order him to be disqualified for holding or obtaining a licence for such period as the court think fit, and may in any case, and shall where a person is by virtue of a conviction disqualified for holding or obtaining a licence, or where an order so disqualifying any person is made or where so required by this Part of this Act order that particulars of the conviction and of any disqualification to which the convicted person has become subject shall be endorsed on any licence held by the offender." The proviso which followed has been repealed and is irrelevant to our discussion.

Section 26 (2) of the Act of 1956 reads, "In subsection (1) of section six of the Act of 1930 (which provides for disqualifications for holding a licence and for the endorsement of licences, on conviction of criminal offences in connexion with the driving of a motor vehicle, other than offences under Part IV of that Act) for the reference to any such offence as aforesaid there shall be substituted a reference to the offences specified in the Fourth Schedule to this Act." As we understand it the object and effect of this substitution was to provide a specific list of offences in place of a phrase "criminal offences in connection with the driving of a motor vehicle" which left room for doubt as to whether certain offences were or were not covered by that phrase. We do not think that it was intended to have any other effect, and we do not think that it has.

We come now to s. 2 (4) of the School Crossing Patrols Act, 1953, which is as follows: "the power conferred by para. (*a*) of subs (1) of s. 6 of the Road Traffic Act, 1930, on a court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle to order him to be disqualified for holding or obtaining a licence to drive a motor vehicle shall not be exercisable by virtue of the conviction of a person of an offence under subs. (2) of this section if it is his first or second conviction thereunder."

We read s. 2 (4) as accepting that the offence under s. 2 (2) is a criminal offence in connexion with the driving of a motor vehicle and as modifying, in respect of that particular offence, the power given by s. 6 (1) of the Act of 1930. This is very different from saying that s. 2 (4) amends s. 6 (1), and this difference is important because it goes to the root of the matter we are discussing. When we consider s. 6 (1) of the Act of 1930 with the substitution made by s. 26 (2) of the Act of 1956 we find that the effect, so far as the School Crossing Patrols Act, 1953, is concerned, is that offences under s. 2 (2) of that Act are included in para. (10) of sch. 4 to the Act of 1956. In our view s. 2 (4) of the Act of 1953 must now be read as if the wording were "the power conferred by para. (*a*) of subs. (1) of s. 6 of the Road Traffic Act, 1930, on a court before which a person is convicted of any offence specified in sch. 4 to the Road Traffic Act, 1956, to order him to be disqualified . . . shall not be exercised by virtue of the conviction of a person of an offence under s. 2 (2) of this Act if it is first or second conviction thereunder." It seems to us that if this were not the effect intended to be produced then s. 2 (4) of the Act of 1953 would have been repealed by the Act of 1956; and we think that not only was this the intended effect but also that it is the actual effect.

The contrary view, with which we do not agree, is based, as we have said, on treating s. 6 (1) of the Act of 1930 as amended by s. 2 (4) of the Act of 1953 so that the former subsection could at that time be read "any court before which a person is convicted (*otherwise than a first or second occasion if the offence be one under s.* 2 (2) *of the Street Crossing Patrols Act,* 1953) of a criminal offence in connexion with the driving of a motor vehicle," etc. etc. It is then argued, so we believe, on the basis that s. 6 (1) was so amended, that when the subsection introduced by s. 26 (2) of the Act of 1956 is made the "otherwise than on a first or second occasion, etc.," is lost from s. 6 (1) and that had it been intended to retain the exception in respect of such first and second convictions the exception would have been set out in sch. 4. In support of this argument it is urged that had s. 2 (2) of the Act of 1953 been omitted from sch. 4 there would, in spite of the deference in s. 2 (4) of that Act, have been no power to disqualify for such offences. We agree that this would have been so, but we do not accept that it strengthens the argument, because s. 2 (4) does not purport to confer a power to disqualify but merely to modify such a power given by s. 6 (1) of the Act of 1930.

The omission of any reference to s. 2 (2) from sch. 4 would have made the provision in s. 2 (4) otiose, and it would probably have been repealed. No one could have argued, we would suggest, that s. 2 (4) of itself gave a power to disqualify on a third or subsequent conviction.

We hope we have done justice to the argument in support of the view which we do not accept. We say in conclusion that in our view the most that can be said, if our opinion on the point is not the correct one, is that the matter is not free from doubt. In that event we think courts should refrain from exercising a power to disqualify, to the detriment of the defendants concerned, when it is not clear beyond doubt that they have such a power. We think, as we have said, that there is no such power.

VENUE UNDER THE GUARDIANSHIP OF INFANTS ACTS

[CONTRIBUTED]

In 1886, Parliament by the Guardianship of Infants Act gave to Judges powers in respect of infants which, over the years have often demanded the wisdom of Solomon in their exercise. These powers were to be exercised by " the court," which by s. 9 of the Act, meant the High Court, or the county court of the district in which the respondent or respondents or any of them might reside.

By the Guardianship of Infants Act, 1925, Justices of the Peace were given these powers also, subject to certain restrictions which need not concern us here. The words used by the draftsmen so to extend the original Act were simple, deceptively so. It was provided, by s. 7 of the 1925 Act, merely that " For the purposes of the Guardianship of Infants Act, 1886, as amended by this Act, the expression ' the court ' shall include a court of summary jurisdiction." There was no limitation similar to that applying to county courts in the earlier Act.

Reference to the Summary Jurisdiction Acts was of little help in deciding the appropriate venue. The difficulty of the problem is clearly set out in Lieck & Morrison, *Matrimonial and Family Jurisdiction of Justices* (1932 edn. at p. 160) and was discussed from time to time in these columns. The answer was given in *R.* v. *Sandbach JJ.s, ex parte Smith* (1950) 114 J.P. 514. In that case, it will be remembered, the mother who lived in Cheshire took proceedings there against her husband in Oxfordshire in respect of their child who at the time was in Ulster. It was decided that the proper venue was the Oxfordshire court within whose jurisdiction the father, the defendant, lived, and that the words in the 1886 Act relating to county courts applied equally to courts of summary jurisdiction.

Parliament, it would appear, considered that it would be wrong thus to compel a woman to pursue her spouse to make him contribute to the maintenance of his off-spring, and by August, 1951, just 12 months after the decision above, the Guardianship and Maintenance of Infants Act, 1951, appeared on the statute book.

By s. 1 of that Act, jurisdiction in these matters was given to the High Court or to " the county court of the district or a court of summary jurisdiction having jurisdiction in the place where the respondent or any of the respondents, or the applicant or the infant to whom the application relates resides," and that definition of jurisdiction was formally substituted for the earlier definitions quoted above.

So far, so good. Provided she knows where he is residing, and provided a summons may properly be served upon him there, the mother of an infant may proceed against her husband, the infant's father, in her local court, without the necessity of travelling to whatever part of the country he has favoured with his presence in order to seek her remedy.

Thus the shortcomings in the procedure for obtaining an order had been cured, but the problem of variation of that order, once it has been obtained, remains. One would imagine, as a matter of common sense, that the appropriate tribunal to alter any order would be the court which made it. Such was in fact the case, but the migration of population which took place during the war made this restriction a source of hardship to many mothers evacuated with their children to a place of safety. Regulation 17c of the Defence Regulations introduced the system now set out in r. 34 of the Magistrates' Courts Rules, 1952, under which complaint to vary an order may be made either to the " original " court (which made the order in the first place) or the court having jurisdiction where the complainant resides. In the latter event, the complaint is transmitted to the clerk of the original court. Having received such a complaint, either by personal application or by post from another court, the justices of the original court are to determine where the complaint can most conveniently be heard, and, should they decide that another court would be more convenient than their own, the complaint is forwarded to that other court, which thereupon becomes seized of the matter.

The safeguard for the parties is contained in r. 34 (8), which provides that where such a complaint is heard by a court other than the original court, that court shall notify the result by means of an extract from its register to the original court, and that the clerk of the original court shall enter that extract in his register. Under that system, therefore, any alteration in the provisions of an order, wherever this may take place, is recorded by the court which made it in the first place, and should any question arise as to the provisions in force, reference to that original court can resolve it.

However, the decision in *re Dankbars* (*an infant*) [1953] 2 All E.R. 1318; (1954) Ch. 98 (*sub nom. re D.* (*an infant*) (1954) 118 J.P. 25) renders the use of the procedure unnecessary, and thereby avoids its most important safeguard. It was decided, in that case, that the court of summary jurisdiction sitting at Wallington, Surrey, had jurisdiction, as a result of the terms of the 1951 Act, to vary an order made under the Guardianship of Infants Acts, by justices at Eastbourne, without there having been any reference to that latter court. [*cf. Meaney* v. *Meaney* [1957] 2 All E.R. 415 as to the position under the Summary Jurisdiction (Separation and Maintenance) Acts.]

The complications which may arise from the situation created by this decision are obvious and infinite. No court to which application is made to enforce an order can ever be absolutely sure that the order has not been altered by some other court without its knowledge. The complainant for arrears might ask for a summons or a warrant to issue,

ignorant of the fact that the amount had been varied to such an extent that no arrears had accrued. It is possible that the summons to vary was served at her last-known place of abode, which she had already left, and that the court hearing that summons decided to do so in her absence* Further, the many questions of residence, whether it be real or *ad hoc*, already decided under the Bastardy Laws Amendment Acts (*see, e.g.*, *R.* v. *Hughes* (1857) 21 J.P. 293; *Myott* v. *Barber* (1863) 27 J.P. 598; *Vevers* v. *Mains* (1888) 4 T.L.R. 724 and others) are raised again, and must be reconsidered in the light of the wording of these Acts.

Many other disturbing possibilities must occur to the reader, not the least being the position which might well arise if a man be arrested on a warrant for arrears issued after the order has been varied in his favour by another court without the complainant or the justice who signed the warrant being aware of the variation. The defence to an action for false imprisonment would undoubtedly cause many anxious moments.

Moreover, respect must be paid to the general principle that the law should be certain, not only as to its provisions, but also in its effects on those concerned. The provisions may be certain, but in this case, the results could scarcely be less so. It would appear certain, however, that the only safe course to be followed in all such cases, at least until the decision, *in re D* is modified by Parliament or some other agency, is the procedure laid down by r. 34 of the Magistrates' Court Rules.

* At the time this was written, the Bill which became the Magistrates' Courts Act, 1957, had not been published.

SANS CULOTTE

We have spoken from time to time about costume as seen by public authorities. We have advised that magistrates cannot properly refuse to hear a trousered or a hatless woman: that duffel coats do not disentitle the wearer from entering a court or school, and that a workman who attends court in his working clothes ought not on that account to be treated as intending wilful disrespect. The last occasion of our referring to any matter of the sort was the tiresome case of the schoolboy's rock an' roll suit—made deliberately tiresome by his parents. This last was unusual; another unusual problem in quite a different sphere has just come to our notice. There is a city where since Tudor times aldermen have been accustomed to wear robes at council meetings. Each alderman has a blue robe for ordinary days, and a scarlet robe which is worn on ceremonial occasions and at one council meeting every quarter. At some date (we are not sure when) after the reconstitution of the council under the Municipal Corporations Act, 1835, councillors also took to wearing robes, in their case a plain black gown. The councillors do not robe themselves for ordinary meetings, but do so on the days when aldermen wear the scarlet robe. Aldermen and councillors have provided their own robes, normally by buying them from their predecessors in office.

We have commented lately in a different context upon an opinion expressed by the Minister of Housing and Local Government, to the effect that such robes could lawfully be provided out of public funds. This opinion may have been expressed in answer to an application for sanction under the proviso to s. 228 (1) of the Local Government Act, 1933. We do not think the legality of such provision has been decided upon appeal from a district auditor's decision, and it has not come before the High Court. We doubt whether the opinion stated is good law; it would not bind the courts if the question came before them, nor would it even bind a district auditor if he felt it his duty to challenge such expenditure. We have digressed to the extent of mentioning it here, lest it be thought that we had forgotten the Minister's opinion.

In the city of which we have been speaking, we do not know whether the council's general accounts come under district audit. Be this as it may, the council have not provided robes, but have left this to be done by aldermen and councillors themselves. The unusual matter of which we are speaking is that a newly elected councillor is stated to have refused to wear a robe on the days when this has been the custom. He does not say that he cannot afford it; he refuses, presumably, on principle. His colleagues and the chief officials are concerned to know what the majority can do if they are minded to protest.

We do not know what is the principle behind this exercise in nonconformity, but sartorial divergence for conscience' sake has for centuries been familiar. Diogenes was an early instance, to be followed within living memory by Bernard Shaw in his days as a dramatic critic, challenging the managements of theatres to exclude him because he wore an evening dress invented by himself, of velvet jacket and flowing bow. Better known to ordinary readers than either the ancient or the very modern must be the vagaries of the original Quakers, as recorded by Macaulay. George Fox held it to be a religious duty to keep his hat on his head in whatever person's presence. One of his friends, Fox stated, had walked naked through Skipton declaring the truth, and another for several years was divinely moved to go naked to market places and to the houses of gentlemen and clergymen. Fox himself walked barefoot through Lichfield crying: "Woe to the bloody city," but never (so far as Macaulay could discover) thought it his duty to discard, in public, the garment which had earned him the soubriquet of "leather breeches"—worn, presumably, because of its inelegance. At the other extreme of opinion, Sir John Fenwick cocked his hat in the presence of Queen Mary so ostentatiously that (says Macaulay) his rudeness contributed to his losing his head some years afterwards. And there were, a century later, the revolutionaries of Paris who have given us a title for this article—using items of costume, like Fenwick and like Boanerges in *The Apple Cart*, for political demonstration, much as Teddy-boys and others at the present day use costume to demonstrate (it is supposed) hostility to the constituted arrangements of society.

But to return to the unrobed councillor: is there any legal means by which to oblige him to dress on ceremonial occasions in a ceremonial manner?

It is clear that the councillor cannot be excluded from the council's meetings. He has been duly elected and is entitled to attend, in robes or without. An amusing dialogue in the Socratic manner might imagine hypothetical cases. Let it be granted that the law would prevent his appearing like the Skipton Quaker, but is a councillor entitled to attend a meeting wearing bathing trunks and nothing else? If not, what is the statutory or common law basis for exclusion, and, if he can be excluded for lack of covering, at what point of eccentricity does the power of his colleagues to exclude him

cease to be available? He can certainly turn up shoeless, like Fox at Lichfield, and without a collar or tie. Such a dialogue is, however, remote from the case which has arisen. So far as we can see, the mayor, aldermen, and councillors are helpless. They are entitled to call the recalcitrant a curmudgeon, but there is nothing in the English law of local government which precludes a curmudgeon from being elected and being a councillor. We even venture on the guess that, in the city where the matter has arisen, there were enough electors preferring such a character in their representative to justify attributing his conduct to a political rather than a conscientious motive.

RATES IN 1958–59

The Annual Return of Rates Levied and Rates Levied per Head of Population in 1957–58 published by the Institute of Municipal Treasurers and Accountants shows that average rates levied increased in that year by substantial percentages above the 1956–57 figures:

	Average Rates Levied		*Percentage Increase*
	1956–57	1957–58	
	s. d.	*s. d.*	
County boroughs	16 7	18 10	13
Metropolitan boroughs...	13 11	16 11	22
Non-county boroughs ...	16 11	18 10	11
Urban districts	16 11	18 10	11
Rural districts	15 4	17 0	11

Because of the revaluation useful comparisons cannot be made with earlier years but comparisons of rates paid per head of population (in many ways a more useful statistic than rate poundages) reveals some striking increases over earlier years, for example:

	Average Rates Levied Per Head of Population		*Percentage Increase*
	1947–48	1957–58	
	£ *s. d.*	£ *s. d.*	
County boroughs	6 10 5	11 2 6	71
Metropolitan boroughs	11 13 3	25 1 7	115
Non-county boroughs	6 18 3	12 0 8	74
Urban districts	6 4 10	10 13 1	71

It is undeniable that over the same period inflation has run its devastating course: in 1947 the pound was worth 18*s.* 8*d.* by comparison with 20*s.* for the year 1946, but by April, 1957, its value had fallen to 12*s.* 6*d.* Rate levies have therefore followed the general trend, and it is still true to say that rates now represent a smaller proportionate charge upon the incomes of the majority of citizens than was the case in the pre-war period. Let us frankly admit that this position, admittedly due in many cases to the switching of liability for local expenditure from the rates to the national exchequer, has in many council chambers caused the seed of retrenchment to fall upon stony ground in spite of the half-hearted agricultural efforts of a number of governments, mostly exercised by adjuratory circulars. This is not to say that councils have been wildly extravagant: what has happened in so many cases is that the desirability and advantages of various projects have been assessed as outweighing the disadvantages of paying a share of their cost. That share has sometimes been only 20 *per cent.*, sometimes even less.

The new block grant provisions do not operate at all until April 1, 1959, and even then any loss will be made good completely in 1959–60, and up to 90 *per cent.* will be reimbursed in 1960–61. Whether the new proposals will ever be fully operative depends on political factors at present unknown. If in due course the announced intention and design should in fact be completely achieved it would then be vastly instructive to learn what influence the new financial relationship between central and local government would exert on the development of services. Knowledge of the outcome would be awaited even more eagerly if the present era of dear money, or something approaching it, persisted to that time. Take, for example, a new school of moderate size and economical design costing say, £100,000. The annual loan charges on this sum, with interest at 6¼ *per cent.*, would amount to £7,800 and, incidentally, the total cost over a 30-year period would be £235,000. An authority planning to build 10 such schools a year might well feel that £78,000, plus all the other running charges, was too heavy a burden to throw immediately on to its ratepayers, particularly as the proportions in which at a later stage the burden would be allocated between central and local funds would be uncertain and incapable of being estimated, being dependent among other things, on the general level of expenditure (within certain nationally limited standards) of all authorities of similar type in England and Wales.

Again, a council house costing £1,500 to build would at 6¼ *per cent.* require annual provision for loan charges of £103 and when other maintenance charges were brought into account the economic rent, exclusive of rates, could not be less than about 45*s.* weekly. Here, unlike the education service, the cushioning effect of a large government grant does not apply (except in the case of houses provided for certain defined purposes such as slum clearance or under a town development scheme) and authorities building houses for the general public may feel that costs are too high to enable planned works to be fully executed. Similarly, in spite of the 50 *per cent.* grant, some slowing down of housing for the police might be thought necessary.

Apart from the restrictive effect of high cost capital the Government exercises in many departments a direct control, and an announcement has been made that, in general, sanctions to public capital expenditure will be limited to the cash levels of 1957–58, that is about £1,500 million. The pegging of the rate of public investment at this level is aimed at preventing a rise of between £300 million and £350 million in the next two years. Priorities will have to be decided among the various interests, including the nationalized industries but in general preference will be accorded to productive investment. How the Government define this phrase is not completely clear at the time of writing: it is thought, however, that the roads programme, for one, will be regarded as a priority.

Local authorities may well feel that the controls available to the Government are fully adequate to limit capital expenditure in the public sector, and that the addition of a high interest penalty is superfluous and wasteful of public money. However, as the Chancellor has chosen the monetary weapon to meet the present crisis it must, to be effective, be all embracing and indiscriminate. Our previously expressed opinion remains unchanged: we still believe that control of local authority capital programmes could be linked

with provision of funds by the Government, either by Local Loans Stock or from below the line budget surpluses, at great financial benefit to taxpayers and ratepayers with no ill-effects upon the general financial position of the country.

However these matters may be resolved the effect upon the budgets of 1958–59 will be negligible so far as reduction of revenue expenditure by way of loan charges is concerned. Looking ahead to a prospect of grant restrictions and high interest rates local authorities indeed may decide to step up in the forthcoming year their provisions to meet capital expenditure direct from revenue, so far as grant limitations allow them to do so.

On the revenue expenditure side increases must be expected. A general round of wage and salary increases has operated during 1957–58: it is unlikely that provision was made in many of the budgets of that year to cover the additional liability in full. The increases apply to most of the financially important blocks of local government employees, including the administrative, professional, technical and clerical classes, manual workers of various kinds including those coming within the ambit of the Northern Joint Council for Local Authorities Services, domestic staffs in residential institutions, civil engineering craftsmen, firemen, nurses, and the staffs of children's homes, not to mention those who are not local council employees but whose salaries are a charge on rate funds, such as chief constables, stipendiary magistrates and probation officers. Wages and salaries account for half of local budgets and full provision for increases in 1958–59 will require increased contributions from the ratepayers.

In passing it may be mentioned that these awards, made at varying dates throughout the financial year, are a seriously disturbing factor in local finance. Quite understandably finance committees and councils are impelled to protest about the times at which the awards are made and the differing dates from which they become effective. The County Councils Association, for one, has considered such protests on a number of occasions: the latest was from a county council who, apart from making a general protest about the supplementary estimates which the awards necessitated, said that the effect would be much more serious under the new block grant provisions because of the delay in securing the appropriate Government contribution in respect of such increases. It was said that the result might have to be a considerable increase in working balances. Nevertheless, the Association considered that, having regard to the varied negotiating machinery in existence, it was impossible to secure that all these differing and independent bodies should make their awards operative from the same date (April 1 was asked for) in any one year.

These increased wage costs, coupled with continuing expansion of services, and price rises in other directions, must mean rate increases in 1958–59. The financial acumen and skill of the treasurers will keep the increases to a minimum, but council members have an important part to play also. O. & M. investigations could be set on foot in many authorities where such detailed investigations have not yet been made, and the many policy matters involving finance should be scrutinized even more carefully than in the past. There is a rich field here which has rarely been fully worked: its potentialities should be developed and the full benefits realized for the benefit of the rated and the taxed. The burdens born of local government services will still increase in the future, as is inevitable if plans for expanded and better services are to materialize. This is in accordance with the wish of the public: it is correspondingly important to ensure that the public get the utmost value for their money.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Donovan, JJ.)

R. *v.* WILSON

October 2, 1957

Criminal Law—Trial—Conclusion of summing-up—Retirement of jury—Return of jury with question to court—Recall of witness—Irregularity necessitating quashing of conviction.

APPEAL against conviction.

The appellant was convicted at the county of London sessions of pavilion-breaking with intent and possessing housebreaking implements by night, and was sentenced to three years' imprisonment.

The premises alleged to have been broken into were a cinema, and the evidence included that given by a Miss Lloyd, the secretary and cashier of the cinema, who stated that on the evening in question she left the cinema at 11 o'clock and noticed the appellant and another man standing at the corner of the street. In her evidence she said that, after having coffee, she returned to the cinema. After the jury had been out for some time to consider their verdict, they came back to ask the question: "Why did Miss Lloyd go back?" The deputy-chairman decided to recall her, and in answer to the question she said that she had seen what she thought were suspicious people and also that the boiler-room door was open.

Held: that in *R.* v. *Owen* (1952) 116 J.P. 244, the ruling was given that, once a summing-up was concluded and the jury had retired to consider their verdict, no further evidence could be given, and if the jury returned and asked a question relating to the evidence, the Judge should either tell them that no evidence had been given on the point and they must take it that there was no evidence, or, if evidence had been given on the point, should remind them of the evidence. As there had been in the present case a departure from that rule, the conviction must be quashed.

Counsel: *Titheridge* for the appellant; *D. A. Hollis* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Donovan, JJ.)

POULTRY WORLD, LTD. *v.* CONDER

October 11, 1957

Animals—Live wild birds—Offer for sale—Birds difficult to breed in captivity—Advertisement in journal—Prosecution of proprietors for aiding and abetting—Insufficient knowledge, but no connivance—Protection of Birds Act, 1954 (2 *and* 3 *Eliz.* 2, *c.* 30), *s.* 6 (1) (*a*).

CASE STATED by Leicester justices.

At Leicester magistrates' court an information was preferred by the respondent, Conder, assistant secretary of the Royal Society for the Protection of Birds, charging the appellants, Poultry World, Ltd., proprietors of the journal *Cage Birds*, with aiding and abetting the sale of live wild birds, namely, hawfinches and crossbills, contrary to s. 6 (1) (*a*) of the Protection of Wild Birds Act, 1954. The section does not apply to "a close-ringed specimen bred in captivity."

On November 1, 1956, an advertisement appearing in *Cage Birds* read as follows: "A.B.C.R. linnets £1; hawfinches, cocks 65*s.*, hens 55*s.*; pair £5. Crossbills, cocks 50*s.*, hens 45*s.* Particulars Cooke, 27, Burleigh Avenue, Wigton Fields, Leicester." The justices found that hawfinches and crossbills were very difficult to breed in captivity and it was improbable that anyone

could so breed them profitably in any number or on a commercial scale. The advertisement manager of *Cage Birds* was not an expert breeder of birds and did not know that hawfinches and crossbills were difficult to breed in captivity. The justices were of the opinion that the appellants had made no sufficient investigation, convicted them, and fined them £10. The appellants appealed.

Held: that persons could not be convicted of aiding and abetting unless they knew the facts which constituted the offence, and that, although the law would impute knowledge of persons if they deliberately shut their eyes to the obvious and so connived at an offence, there was nothing in the present case which amounted to connivance, and the appeal must, therefore, be allowed and the conviction quashed. If, however, the appellants continued to employ an advertising manager without the knowledge which he should have, at some future date it might be held that there had been such negligence as to amount to connivance.

Counsel: *Geoffrey Lawrence, Q.C.*, and *Bernard Finlay* for the appellants; *Lawton, Q.C.*, and *Michael Havers* for the respondent.

Solicitors: *Good, Good & Co.; Baileys, Shaw & Gillett.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ROSENBLOOM *v.* McDONNELL

October 10, 1957

Metropolis—Hackney carriage—Taxicab—Hiring partly by time and partly by distance—Double fare demanded—No special bargain—London Hackney Carriage Act, 1853 (16 *and* 17 *Vict., c* 33), *s.* 17 (1)—*Metropolitan Public Carriage Act*, 1869 (32 *and* 33 *Vict., c.* 115), *s.* 15—*London Cab Order*, 1934 (*S.R. & O.*, 1934, *No.* 1346).

CASE STATED by the Chief Magistrate of the metropolis.

At Bow Street magistrate's court an information was preferred by the respondent, McDonnell, a police officer, charging the appellant, Lewis Rosenbloom, a taxicab driver, with unlawfully demanding more than the proper fare, contrary to s. 17 (1) of the London Hackney Carriage Act, 1853, s. 15 of the Metropolitan Public Carriage Act, 1869, and the London Cab Order, 1934.

At the hearing the following facts were established. At about 2.15 on the morning of December 24, 1956, the appellant's cab was hailed by a man as it was plying for hire in Charing Cross Road. The man asked if the appellant would take him to the General Post Office, wait for him there, and then bring him back to the starting point. He said that he would "see him all right." The appellant accepted the hiring and started on the journey. The cab was kept waiting outside the Post Office for some 40 minutes, and when it eventually got back to its starting point, the amount recorded on the taximeter was 8*s.* 6*d.*, which together with an additional 6*d.* surcharge, made the fare computed according to the taximeter amount to 9s. The appellant was offered 12*s.* 6*d.*, which he refused, asking for more and saying: "I am entitled to charge double fare as I had to wait so long." The magistrate convicted the appellant, but granted him an absolute discharge. The appellant appealed.

Held: that the evidence showed that this was a normal hiring, partly by time and partly by distance, and there had been no special bargain; the only demandable fare, therefore, was 9*s.*; and the magistrate had rightly convicted the appellant.

Counsel: *Borders & Gabriel Cohen* for the appellant; *Wrightson* for the respondent.

Solicitors: *Philip Conway, Thomas & Co.; Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

MAGISTRATES' ASSOCIATION

The annual general meeting of the Magistrates' Association is fortunate in securing the Guildhall for its venue. It can be sure of an impressive State opening by the Lord Mayor, whose entry with his officers confers an unique official dignity on the proceedings. The Lord Mayor in his welcome, expressed his pleasure that membership of the Association had for the first time passed the 10,000 mark, and noticed that the subscription had been raised for the first time since 1920.

Lord Merthyr, in his address from the chair, referred to the death of Lord Jowitt, who had been Lord Chancellor when two great measures affecting the magistracy had been passed, the Criminal Justice Act, 1948, and the Justices of the Peace Act, 1949. He reviewed recent legislation which concerned the summary jurisdiction, and notably the Maintenance Agreements Act, to which he hoped the benches would give a fair trial. It should result in a big saving of time without impairing the efficiency of justice. He alluded to the work of the Departmental Committees which were now sitting, and to the Report of the Wolfenden Committee. He was glad to report the formation of many new branches of the Association, and an assurance that the request of the Association for more remand centres would soon be implemented. He expressed the general regret of members at the resignation of Miss de Blank, and welcomed the new Secretary and Assistant Secretary. He moved the adoption of the report of the Council.

Mr. Buxton, honorary treasurer, seconded and recalled the great financial anxiety which had exercised the Council for some years. Despite £2,000 received in respect of covenanted subscriptions, the Association are still £1,300 "on the wrong side," and are eating up their reserves. One suggestion for cutting their losses was to reduce the number of issues each year of the organ. Some magistrates argued that the present subscription is as much as they can afford; but the Council were aware that in some areas, magistrates pooled their resources to enable subscriptions to be maintained.

In the discussion which followed, members raised a variety of issues. The counsel's opinion on the liability of justices in actions against them, had not yet been submitted to the Association. One speaker criticized this delay; and another speaker pressed that the Association should ask for a more official recognition of long service on the bench.

In reply to Mr. G. J. Morley Jacobs (London Juvenile Courts), who drew attention to a recent suggestion that there was a strong case for an unconditional Treasury subsidy, to enable the Association to maintain its services to magistrates, Lord Merthyr replied that no arrangement which entitled a loss of complete independence to the Association or the magistracy, would win favour with a big section of members.

A presentation of jewellery and a cheque was made to Miss de Blank, in appreciation of her 17 years' service with the Association, including five years as general secretary. The work of the office had never lagged behind in spite of its serious handicaps, including shortage of space; and this administrative smoothness was largely due to the tact and forcefulness of Miss de Blank. Lord Merthyr's tribute elicited prolonged applause.

The first motion on the Agenda, proposed by Dr. R. M. Jackson, and seconded by Mr. Leslie Pugh, recommended that the functions of the court usher should be performed, not by a uniformed policeman, but by a gowned official. The speakers expressed very divergent views on this proposal which sought to give proceedings in the summary jurisdiction a great appearance of impartiality. It was pointed out, on the one hand, that analogous duties in the High Court and County Court were discharged by un-uniformed officials, and the police, if they were present at all, stood in the background; and on the other, that the proposal might arouse public opposition for entailing a multiplication of officials and an increased load on public finances. We have not yet entirely purged from the public mind the "police-court" concept. The proposal was finally rejected by 152 votes to 108.

An amendment to the constitution of the Association was carried without dissent. It permitted in certain circumstances, the incorporation of smaller branches of the Association.

Mrs. Bishop, of Leicester city bench, proposed a resolution asking that a sentence of imprisonment for arrears on maintenance orders, should not extinguish the debt. Her argument was that 5,000 men are imprisoned yearly for non-payment, that, whilst they are in prison, they are maintained by public funds, and so are their wives and children, yet many of the men were there for obstinately refusing to pay. Other legal systems used such devices as arrestment of wages and the imposition of productive labour in prison to ensure that the culprits did not evade their moral responsibilities. Our own law needed some such provision. The resolution was carried without dissent.

The afternoon session was addressed by the Lord Chancellor, Viscount Kilmuir, who congratulated the Association on its

recent growth. It was of the greatest value to the community to have not only a body of men and women permanently dedicated to the local administration of justice, but an Association through which they could collectively act, and be approached by the Government. He dwelt on the significance of the 50th anniversary of the probation service, and of the 25th anniversary of the Children and Young Persons Act of 1933. He noted that the new upward trend in the figures of juvenile offences was putting more work on the children's courts. He commented on the objectives of the Ingleby Committee, the terms of reference of which were widely drawn.

The meeting was next addressed by Mr. Simon, M.P., Parliamentary Under-Secretary at the Home Office. He first expounded the provisions of the Magistrates' Courts Act, 1957, which was based on the recommendations of the Departmental Committee on the Trial of Minor Offenders. He then outlined the Home Office plans for the creation of attendance centres. On the subject of defaults in payments under Maintenance Orders, he said the Government were well aware of the effectiveness of Attachment Orders in Scotland.

He spoke at length on the scheme for promoting research, to which the Home Secretary attached great importance. It was his intention to push research in criminology and penology, not as an academic exercise, but as a practical aid to all who are engaged in the administration of justice. We must make the best use of our intellectual resources; and weigh, so far as we can, the comparative merits and results of the different modes of treatment which the courts had at their disposal. The Home Office was alive to the criticisms that could be directed against the value of short sentences and fines. Pecuniary penalties fixed long ago often seemed inadequate to the needs of our own time, and must be kept under review. Mr. Simon gave a brief summary of recent trends in the work of the Prison Commission. They were producing their first building programme for 50 years, and this included a psychiatric institution in Buckinghamshire. A major re-building programme to replace the old local prisons is now out of the question, because the country cannot afford it. We are forced instead to plan re-adapting the old buildings. Since the beginning of this year, the population of our prisons has risen sharply. The Home Office regard it as impossible to provide all the institutions outlined in the 1948 Act. There is a great need for remand centres, but old buildings cannot be adapted for this purpose.

The next debate was on a resolution designed to relieve magistrates of their difficult responsibility in certifying insanity. The motion was defeated by 125 votes to 69.

A motion on the agenda favouring the extension of detention centres and remand homes was passed.

Mr. Appleton, Kingston, expressed his regret that no mention had been so far made of the Liverpool experiment. He pleaded that the disapproval which the Council had expressed, might be withdrawn, and the whole project reconsidered. Mr. Leslie Pugh replied for the Council, that if the police officer is perfectly capable of dealing with delinquent children, we must be wasting much time and money in the training of social workers. In Liverpool, the police undertook their responsibility only on two conditions, the offender must be a first offender, and must admit the offence. Magistrates would find these complications a practical hindrance, and, in his view, the scheme should not be extended until the Ingleby Committee has reported.

[We are obliged to the Rev. W. J. Bolt, B.A., LL.M., for the above Conference report.]

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIRS,

I read with interest your opinion to PP. 9 in your issue of October 5, 1957—Salmon & Freshwater Fisheries, as during 1954 I personally took this matter up with the Home Office, and for your interest I quote below a copy of Under Secretary of State's reply.

Again, this is only his view, and not a decision on the point.

Yours faithfully,
A. E. SMEETH,
Assistant to the Clerk of the Justices,
Petty Sessional Division of
Wimborne, Dorset.

"Greenways,"
19 Churchill Road,
Wimborne Minster, Dorset.

COPY LETTER

Home Office,
Whitehall, S.W.1.
December 17, 1954.
MAG/7/6/8

SIR,

I am directed by the Secretary of State to refer to your letter of October 12, to express regret for the delay in replying, and to say that, while he has no authority to determine a point of law, he is disposed to take the view no fee should be charged for supplying a certificate of conviction in accordance with a statutory duty to do so; for example, under s. 77 (1) of the Salmon and Freshwater Fisheries Act, 1923.

I am, Sir,
Your obedient Servant,
(Signed) M. HORNSBY.

The Clerk to the Justices,
30 West Street,
Wimborne, Dorset.

PERSONALIA

APPOINTMENTS

The Queen has been pleased to approve that the following persons be re-appointed members of the War Works Commission on the expiry of their terms of office: Sir Thomas Williams Phillips, G.B.E., K.C.B. (Chairman), Sir John Maxwell Erskine, G.B.E., Sir Luke Fawcett, O.B.E., Sir Ernest Basil Gibson, C.B.E., Mr. Donald MacLeod Matheson, C.B.E., Sir David Hughes Parry, Q.C.

Mr. Herbert William Kirkwood has been appointed an assistant official receiver for the bankruptcy district of the county courts of Cambridge, Peterborough and Kings Lynn, the bankruptcy district of the county courts of Northampton, Bedford and Luton and also for the bankruptcy district of the county courts of Ipswich, Bury St. Edmunds and Colchester. This appointment took effect from September 30, last.

Mr. Herbert Leslie Britton has been appointed assistant official receiver for the bankruptcy district of the county courts of Sheffield, Barnsley and Chesterfield. This appointment took effect from October 21, last.

Mr. Norman E. Palmer, B.A., has been appointed assistant secretary to Wales and Monmouthshire Industrial Estates, Limited, of Pontypridd, Glam., and will take up his duties on November 1, next. This appointment is a new one.

Miss Edith M. Roberts has been appointed clerk to Portmadoc, Caerns., urban district council. During her 38 years' service on the staff Miss Roberts has served with five male clerks of the council. She now becomes the only woman clerk to an urban council in Wales and there are only two women holding the equivalent of her job in England, one in Durham and the other in Devon. Miss Roberts rose from the grade of assistant clerk to be deputy clerk, and when the last clerk left Portmadoc about 12 months ago, Miss Roberts, at the request of the council, became acting clerk. Eventually she was invited to take over the full status of clerk to the authority.

Miss Constance M. Bent has been appointed probation officer in the Lancashire No. 10 combined probation area committee. She will work mainly in Leigh, Lancs., but also in the Wigan area when required. The appointment is an additional one. Prior to her new appointment Miss Bent was a serving probation officer for five years in the Liverpool city probation service.

Miss Ruth Anne Evans has been appointed whole-time female probation officer for the borough of Wolverhampton in place of Mrs. A. R. Lyle who has resigned. Miss Evans is at present carrying out similar duties in Ashton-under-Lyne where she has been since 1955. Mrs. A. R. Lyle has been a probation officer for Wolverhampton since January 1, 1955.

Miss R. de B. Maclaren has been appointed a whole-time probation officer in the London probation service as from September 30, last, following a Home Office course of probation training.

Miss C. A. Size has been appointed a probation officer in the London probation service as from October 1, last. She served as a whole-time probation officer in the West Riding combined probation area from January, 1952, to March, 1954, when she entered the service of the London county council as a child welfare officer.

NOTICES

The next court of quarter sessions for the borough of Grantham, Lincs., will be held on Monday, November 11, 1957, at 10.30 *a.m.*

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Monday, November 11, 1957.

FISH OUT OF WATER

Fish and chips, those twin charges of the Ministry of Agriculture and Fisheries, have once more appeared, both severally and jointly, in the news. In *Mac Fisheries (Wholesale & Retail) Ltd.* v. *Coventry Corporation* (*The Times*, October 19), the Divisional Court allowed an appeal from conviction by the Coventry Justices on eight informations charging the appellants "that they, being persons engaged in the handling of food, did permit the food (fish, crustacea, and sausage) to be so placed as to involve the risk of contamination, contrary to reg. 8 (*a*) of the Food Hygiene Regulations, 1955, made under s. 13 of the Food and Drugs Act, 1955."

More learned pens than ours will deal with the legal implications. Suffice it here briefly to observe that the issue turned on the meaning to be attached to the words "risk of contamination." The justices had found as a fact that there was such a risk (taking the words in a strictly literal sense) but that there was no risk of contamination of such nature as to be injurious to health. On these findings they found the offence proved. The Divisional Court dissented, holding that if there was no risk of injury to health there could be no offence. The purpose of the regulations was to protect the public health, and the words must be interpreted in that context.

Cases relating to the sale of food are apt, for some reason or other, to produce asides and *obiter dicta* of a light-hearted kind, and this case is no exception. Having considered, without enthusiasm, the suggestion of the Public Health Inspector—that fish exposed for sale should lie behind a screen 18 *ins.* high, with a 9 *in.* shelf on top, like *objets d'art* in the showcases of a museum—their Lordships observed that what one inspector regarded as a sanitary safeguard in Coventry might be ground for a prosecution in neighbouring Birmingham. Counsel for the corporation thought such inconsistencies irrelevant, and instanced cases on sausages, "where no standard is laid down." The Lord Chief Justice refused to be drawn into such sidetracks. "Don't let's discuss" he interjected "'What is a sausage?'" Having thus shunted back the discussion on to the main line, His Lordship considered the absurd results of interpreting the word "contamination," as it were, *in vacuo*. Fish might be "contaminated" even if sold straight out of the sea—"If it's anywhere near where the town drain comes out," observed Lord Goddard, "I should say they would be; but it makes them fatter." Any attempt, on the part of ill-natured persons, to construe this juxtaposition of sea and sewer as an innuendo reflecting upon the amenities of Lady Godiva's famous City is, fortunately, defeated *in limine* by geographical considerations.

So much for this pretty kettle of fish. Linked with chips, its fellow-subject in the "still life" of our day, it has recently been granted the dignity of a double-column on the leader-page of *The Times*, entitled "Fish and Chips Still Frying." The article, despite its facetious headline, is a serious historical survey of "the native invention that has gradually come to occupy a place on the national menu only a shade less secure than roast beef and Yorkshire pudding." It quotes a reference in *Oliver Twist* (1838) to a "fried fish warehouse in a narrow and dismal alley in Holborn," and goes on to contrast the glories of stainless steel and electric mixers that "sweeten the fish-fryers' labours" today, in a business that enjoys a turnover of £50 million a year. And it recalls that happy appellation, "the good companions," once bestowed on fish and chips by Sir Winston Churchill.

Further afield, the battles of the Waterloo Road are now being fought pretty close to the playing-fields of Eton. A serious controversy has arisen out of an application, to the Eton Town Planning Committee, for consent to the opening of a fish and chips shop in the sacred precincts of the High Street. The applicant (says the *Evening Standard*) has labelled the objectors as "backward people, trying to deny progress," and he has had the temerity to add that he "hopes to do a lot of trade with the College boys." It is a pity Thomas Gray is no longer with us, to celebrate the event with a new *Ode* (or Odour) *on a Distant Prospect of Eton College*—not perhaps Distant enough, if certain events befall. And with this present Prospect in view, there is a grim significance in certain of the poet's lines:

"I feel the gales that from ye blow
A momentary bliss bestow
As, waving fresh their gladsome wing,
My weary soul they seem to soothe
And, redolent of joy and youth,
To breathe a second spring . . ."

And again:—

"Still as they run they look behind,
They hear a voice in every wind
And snatch a fearful joy . . .
Alas! regardless of their doom
The little victims play!
No sense have they of ills to come,
Nor care beyond today.
Yet see how all around them wait
The ministers of human fate."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Applicants leaving England within three months of notifying welfare authority—Residence.*

Mr. and Mrs. X are proposing to adopt a child. They notified the welfare authority of their intention to apply for an adoption order in respect of the infant on June 12, 1957. Mr. and Mrs. X will both be going abroad for some years, and they find that they must leave this country on September 11, 1957. They have been informed that this creates a difficulty, having regard to the provisions of s. 2 (6) (*b*) of the Adoption Act, 1950, and r. 10 of the Adoption of Children (Summary Jurisdiction) Rules, 1949–1952.

It has been suggested that the difficulty can be overcome by bringing the case before the justices before September 11, 1957, and at this hearing both Mr. and Mrs. X would attend. The case would then be adjourned to a date at least three months after June 12, 1957, and at that adjourned hearing only the guardian *ad litem* would attend, and the order could be finally made at this adjourned hearing in the absence of Mr. and Mrs. X.

The reason Mr. and Mrs. X are going abroad is that Mr. X is a member of H.M. Forces. He and his wife will return to this country after his period of foreign service terminates.

If the justices were willing to adopt this course, would the adoption order be legal ?

QUESSOR.

Answer.

The real difficulty here would appear to be that by September 11 (and after that date until their return) a court might not be able to find that they were resident in England. *See* s. 2 (5) *ibid.* and *re Adoption Application* 52/1951 [1951] 2 All E.R. 931 ; 115 J.P. 625.

Even if this difficulty could be overcome the Rules require the personal attendance of one applicant at least, and the court has no discretion to dispense with the appearance of both.

2.—Bastardy—*Variation of affiliation order—Father serving soldier in Germany.*

In 1951 A applied to a magistrates' court for an affiliation order against B who was and still is a sergeant in the Army whom she alleged was the putative father of twins born to her. The court made an order for B to contribute £1 10*s.* per week in respect of the two children. Payments have been made regularly by B through the Army pay office. A now wishes to ask the court for a variation of the order for it to be increased. Will you please let me know the proper procedure as B is now stationed in Germany.

FAMPA.

Answer.

We assume the order in question is one of 15*s.* for each child.

No process can be served on the father at present, and we would suggest that the proper course is for the clerk to write to the War Office and inquire when the father is likely to be back in this country.

3.—Byelaw—*Proof of existence—Certified copy.*

Is it necessary in a prosecution under a local authority byelaw for the prosecution to produce the byelaw in court as proof of their case ? I have no doubt as to how the byelaws should be proved after they are produced, but I am not certain that failure to produce a certified byelaw makes conviction illegal. In *Phipson* there is reference to *R.* v. *Powell* (1854) 23 L.J.Q.B. 199, which says that the validity of byelaws may sometimes be presumed. This suggests it is not necessary to give proof as part of the prosecution's case, but I have known of acquittals following a neglect by the prosecution to produce in court a certified copy of the byelaw upon which the prosecution is based.

DUTHA.

Answer.

The ninth edition of *Phipson*, dated 1952, says at p. 581 that the validity of byelaws may sometimes be presumed from long usage. It cites the case mentioned in the query and (for comparison) *Johnson* v. *Barnes* (1873) 29 L.T. 65. The case decided in 1854 related to the internal government of the Mercers Company of London. The Queen's Bench presumed that a method of electing the governing body of the company, which had been followed since the fifteenth century, was in accordance with a byelaw, the validity of which the court would accept. (It will be seen that there were two questions, first the existence of a byelaw and secondly its validity.) Counsel for the company conceded that the position might have been different if strangers had been affected. This decision has no bearing upon byelaws of local authorities. (The decision in *Johnson* v. *Barnes, supra,* did not relate to a byelaw at all but to rights of pasturage, which the court said might be presumed to exist after long exercise.) A byelaw imposing restrictions or liabilities upon members of the public cannot be presumed to exist ; it must be proved. Section 252 of the Local Government Act, 1933, lays down the method. Byelaws of local authorities of the present day are often amended or revoked, and it is not safe to assume that a byelaw made some years ago is still in force, even though a printed copy is produced showing particulars of its adoption and confirmation. It is in our opinion unsafe for magistrates to convict under a byelaw unless s. 252 has been followed.

4.—Children and Young Persons—*Care or protection—Offence in sch.* 1.

Section 61 of the Children and Young Persons Act, 1933, provides in subs. 1 (*b*) so far as it is relevant hereto:

"For the purposes of this Act a child or young person in need of care or protection means a person who is a child or young person who (1) being a person in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed, requires care or protection."

One of the offences mentioned in sch. 1 (as amended), is an offence under s. 6 of the Sexual Offences Act, 1956 (having sexual intercourse with a girl between 13 and 16 years of age).

Subsection (3) of s. 6 says: "A man is not guilty of an offence under this section because he has unlawful sexual intercourse with a girl under the age of 16, if he is under the age of 24 and has not previously been charged with a like offence, and he believes her to be of the age of 16 or over and has reasonable cause for the belief."

Now take a concrete example. A girl aged 15 is found by the police wandering about the streets late at night. She is dishevelled in appearance, and the police officer elicits from her information tending to show that some man has had sexual intercourse with her. She later makes a written statement to this effect, naming the man and saying that she did not tell him how old she was. She is well-developed physically, and could reasonably be taken to be 16 years old.

The police interview the man named by the girl and he admits having had sexual intercourse with her, but states that he "didn't know she was only 15." Further inquiries show that this man is 22 years old and has never "been charged with a like offence."

The girl is brought before a juvenile court on the ground that she comes within the description mentioned in the words of s. 61 quoted above, and it becomes necessary to prove the offence under s. 6 of the Sexual Offences Act, 1956.

I think there can be no doubt that the girl's own statement can be used to prove the act of sexual intercourse, but how can the court hold that act to be an offence unless it can be sure that one or more of the points set out in subs. (3) of s. 6 are negatived ?

It seems to me that, as it is necessary to prove the commission of the offence against the girl, some evidence should be adduced to show that subs (3) of s. 6 would not avail as a defence to an indictment against the man concerned ; if it would so avail then, in my view of s. 6 (3), the act of sexual intercourse was not an offence.

If my contentions are correct, I am wondering in what form and by whom such evidence should be given assuming that the man is not to be prosecuted at all under s. 6 or his trial has not yet taken place. If he has already been tried before the proceedings in the juvenile court and has been convicted of the offence, the commission of the offence is easy to prove. Otherwise, do you think the juvenile court should hear the man's statement to the police and then decide whether subs. (3) applies ?

If you think I am looking at the situation rather narrowly, I agree. From the point of view of the girl's interests it does not matter in the least what the man believed her age to be ;

it is the sexual intercourse which is harmful to her, and if she requires care and protection it is morally right that an order should be made under s. 62 of the 1933 Act. Nevertheless, s. 61 is quite unambiguous in its requirement that "an offence" must have been committed.

I suppose the words "is believed to have been committed" in s. 67 would enable the juvenile court in a proper case to tide over the period between the girl's appearance before it and the man's trial by making an interim order. But what of the position if the man should be found guilty? In such a case, no offence under s. 6 has been committed.

Might it not be safer, where there is a reasonable doubt that the man cannot avail himself of the defence under subs. (3) to allege that sch. 1 offence was indecent assault under s. 14 of the 1956 Act?

Perhaps, to summarize my query, I might put it in this form:—Where s. 61 (1) (*b*) (i) mentions "any of the offences," etc., is it intended that the juvenile court should be able to act under s. 61 on *prima facie* proof of such an offence (coupled, of course, with proof that the girl requires care and protection)? Or must the court consider the probability that an indictment could be successfully met with a statutory defence? Statutory defence, for the purpose of this question includes the exception mentioned in s. 6 (3) of the Sexual Offences Act, 1956, as the burden of proving the points contained therein seems to me to rest on the accused.

VALFA.

Answer.

An offence against s. 6 of the Sexual Offences Act, 1956 is not committed if in fact the man is under 24, has not been previously charged with a like offence, believes the girl to be 16 or over, and has reasonable cause for the belief.

If care or protection proceedings are based upon that offence having been committed they must fail at any stage when such circumstances are proved. In our opinion it would be unsafe for a court to find the girl to be in need of care or protection on this ground until the man had been convicted.

Such a situation would not arise if the offence alleged to have been committed were indecent assault, contrary to s. 14 of the first mentioned Act.

In the circumstances mentioned, however, it might be possible to rely upon s. 61 (1) (*a*) of the Children and Young Persons Act, 1933, and to find the girl to be in need of care or protection on the ground that having no parent, etc., . . . she was exposed to moral danger.

5.—Criminal Law—*Aiding and abetting person unknown.*

Can a person be convicted of aiding and abetting the commission by another person of a summary offence when the principal cannot be proceeded against because his identity is not known?

The circumstances giving rise to this question, on which your opinion is requested, are as follows:

A motor-cyclist, with a pillion passenger, drives his motor-cycle across the path of an oncoming motor coach and thereby compels the driver of the coach to stop. The motor-cyclist stops his motor-cycle and he and his pillion passenger dismount. The motor-cyclist goes to the rear of the coach and commences to deflate the tyres. The pillion passenger goes to the front of the coach, raises its bonnet and pulls out some of the engine leads. The motor-cyclist and the pillion passenger then go away on the motor-cycle.

The motor-cyclist is traced but the identity of the pillion passenger cannot be ascertained. When seen by the police the motor-cyclist refuses to give the name and address of his pillion passenger, but admits the whole incident except that he says that as he was at the rear of the coach he did not and could not see what the pillion passenger was doing at the front of the coach.

The motor cyclist is charged with (1) driving a motor-cycle without reasonable consideration for other road users (Road Traffic Act, 1930, s. 12), and (2) aiding and abetting a person unknown to commit the summary offence of tampering with parts of the mechanism of a motor vehicle while on a road without lawful authority or reasonable cause (*ibid.*, s. 29, and the Magistrates' Courts Act, 1952, s. 35). H.E.D.P.

Answer.

If the facts given are substantiated by the evidence which it is proposed to call, we see no reason why the motor-cyclist should not be convicted if charged in the form proposed.

6.—Criminal Law—*Binding over offender after series of convictions for same offence.*

My council are a shops authority under the Shops Act, 1950. They have prosecuted a local trader who persists in opening his shop on Sundays for the sale (*inter alia*) of postcards, despite the provisions of s. 47 of the Act and sch. 5 (which sets out the transactions for the purposes of which a shop may be open for the serving of customers on Sunday—which does not include postcards or other articles the trader sells).

He has now been convicted in the magistrates' court on 11 informations alleging the sale of postcards on as many Sundays. The maximum fine of £20 (s. 59) has been imposed for the last five occasions.

Despite these fines, the trader was again open last Sunday carrying on trade as before. It is apparent that his profit from illegal trading exceeds the maximum fine that could be imposed.

R. v. *Sandbach, ex parte Williams* [1935] 2 K.B. 192; 99 J.P. 251 is authority for holding that a defendant may be required to enter into a recognizance and to find sureties if the court apprehends that he will do something contrary to the law.

Would you please advise whether this type of offence is such that the magistrates at the next hearing, when further informations will be heard, could be asked to require the defendant to enter into a recognizance with or without sureties to ensure his observance of the Sunday trading provisions of the Shops Act?

FIVAS.

Answer.

We think the magistrates, after further convictions, would, as a matter of law, be entitled to bind over such a persistent offender.

7.—Gaming—*Small Lotteries and Gaming Act,* 1956—*Tombola run by a club.*

The secretary of a registered members' club in this city has asked whether he would be in order in running tombola in the club as part of the normal activities. The club is not conducted mainly for charitable or sporting purposes, but to provide social amenities for members of a transport organization. Profits resulting from the tombola would be placed to the club funds, to improve the general amenities of the club.

I should be glad of your opinion on the following points:

(*a*) Whether the club can register as a "society" under s. 2 of the Small Lotteries and Gaming Act, 1956, for the purpose of running the tombola; and

(*b*) Whether profits resulting from tombola which are devoted to club funds may be classed as "purposes not described in the foregoing paragraphs and not being purposes of private gain" in accordance with s. 1 (*c*) of the Act.

I am in some doubt whether profits devoted to the funds of a members' club can be said to be for private gain or not.

I am aware that various aspects of this problem have been dealt with in previous issues, but I should be obliged if you could give me the present position.

FROG.

Answer.

If the club intends to run the tombola as a small lottery, the question of registration will be one for the local authority. As we have said before, it is difficult to be dogmatic, but, on the whole, we think the objects of the lottery are too close to private gain to enable the club to be registered under the Act.

A rather similar query, in which a club proposed to run tombola at a small gaming party, was dealt with in a P.P. at p. 489, *ante.*

8.—Husband and Wife—*Maintenance order—Disobedience of order as to access.*

Under the Summary Jurisdiction (Separation and Maintenance) Acts, the magistrates' court has, on the finding of wilful neglect to maintain, ordered the husband to pay maintenance for the wife and two children of the marriage, and has given the custody of the two children to the wife with a condition that the husband be allowed to have the children (a boy and a girl aged respectively 10 and 11 years) visit him at his residence between certain hours on alternate weekends. There is no co-habitation order, but the husband and wife are, in fact, living apart. The husband makes frequent visits to the wife's house every week, calling to the children to come out with him. The wife strongly objects to this. What remedy has she? Section 54 of the Magistrates' Courts Act, 1952, seems not to apply.

FRAIN.

Answer.

Since that part of the order relating to access is an order made by a magistrates' court other than for the payment of money, we think s. 54 of the Magistrates' Courts Act, 1952, would apply.

At the same time, the better course might be for the wife to apply to have the order varied as to access, when the whole matter could be aired before the court, and the husband warned of the consequences of repeated disobedience of any order the court makes.

9.—Landlord and Tenant—*Rent Act*, 1957—*Notice to quit—Purported earlier release from liability.*

Section 16 of the Rent Act, 1957, provides that no notice given by a landlord or a tenant to quit any premises let as a dwelling shall be valid unless it is given not less than four weeks before the date on which it is to take effect. It often happens that tenants wish to quit their houses quickly, and in the past a week's notice by the tenant has terminated the tenancy. In future the tenant must give at least four weeks' notice in order to terminate the tenancy and refusal by my council to accept a shorter notice might cause hardship. I note, however, that s. 16 has no express provision in it overriding any agreement contrary to its terms (compare s. 1 of the Increase of Rent, etc., Act, 1920, relating to increase of Rent and s. 23 of the Agricultural Holdings Act, 1948, dealing with notices to quit). In view of this do you consider that it is possible to contract out of the provisions of s. 16 ? Carrying that a stage further, is there any reason why the council, on being given less than four weeks' notice by a tenant, should not expressly waive its right to four weeks' notice ? Assuming that this can be done, am I correct in thinking that the tenant would subsequently be estopped from denying the validity of his shorter notice ?

BONO.

Answer.

Parties can agree to act as if a tenancy had ended when in law it has not. For example, a tenant can leave before his time, or a landlord can refrain from collecting rent. But this does not mean that a tenant (in the case put) can divest himself of his rights and obligations while the statutory four weeks are running. In practice, we suppose that a tenant is unlikely to give notice to quit unless he is sure of somewhere else to go, so that a landlord who lets him off part of the rent for those four weeks runs little risk by proceeding to relet the house. But in face of s. 16 it seems unsafe to let a new tenant into possession until the four weeks have expired, unless the landlord has learnt for certain that the tenant has settled into another house.

10.—Landlord and Tenant—*Rent Act*, 1957—*Weekly rent.*

Section 1 (1) of the Act provides that the rent recoverable for any rental period shall not exceed a rent of which the annual rate is equal to twice the 1956 gross value.

Would you please advise as to what figure should be used as the divisor in calculating a weekly rental from a given annual rate.

C.J.H.

Answer.

The High Court would, in our opinion, say that the weekly amount is to be found by dividing the yearly amount by 52.

11.—Licensing—*On-licence—Closure of part of premises—Alteration of business from "on" to "off."*

The owners of a public house who also hold a full publican's on-licence desire to close part of the premises, but to carry on the off-licence business which has been carried on for several years in part of the fully licensed premises. It is proposed to convert what was the public bar into a store depot for the off-licence business. It may not be necessary to make any structural alterations other than removing the public bar counter and some outside advertising signs.

The owners are contemplating selling the premises and although they would naturally prefer to keep the full on-licence in being and would renew it if possible their chief concern is to be able to carry on the off-licence business.

(*a*) Is there any necessity to make any application to the licensing justices with regard to the proposed closing of part of the premises or to altering the premises ?

(*b*) Should the clerk to the licensing justices or the police be informed of the change of user ?

(*c*) Is it necessary to surrender the on-licence and make a fresh application for an off-licence ?

Your opinion as to the correct procedure to follow would be much appreciated.

NURY.

Answer.

(*a*) The premises will continue to be on-licensed premises notwithstanding that no on-licensed business is carried on. The closing of part of the premises and the conversion of the public bar into a store will almost certainly affect communication between the part of the premises where intoxicating liquor is to continue to be sold and some other part of the premises. It seems to be a border-line case ; but we think that the consent of the licensing justices should be sought under s. 134 of the Licensing Act, 1953 ; and *see R.* v. *Pontypridd Licensing JJ., ex parte Ely Brewery Co., Ltd.* (1948) 112 J.P. 396.

(*b*) and (*c*) These are not requirements of the law, but would be proper things to do. As regards (*c*), it is desirable that a scheme touching the future of the licensed premises shall be presented to the licensing justices at the general annual licensing meeting. An offer to surrender the on-licence coupled with an application for a new off-licence will have the effect of diminishing the strength of opposition to renewal of the on-licence on the ground of redundancy.

12—Licensing—*Registered club—Some part of premises used for private party—Consumption of intoxicating liquor outside permitted hours.*

Our local working men's club has very big premises including a large assembly room with stage and other rooms, which it is possible to lock off from the normal drinking and games part of the club. In addition it is possible to arrange for entrance and exit apart from the normal entrance.

Recently police were called to the street outside the club owing to the disturbance and fighting arising from a wedding party which had taken place at the club. This was about midnight. On further inquiry the committee of the club admitted that they had granted permission to one of their members to entertain his friends (including a number of people who were not members of the club) from 3 *p.m.* until 11.30 *p.m.* All the drinks had been bought on sale or return before the party began, but again it was admitted that many of the party had spent a considerable part of the time in the ordinary drinking part of the club.

In my opinion all the premises are part of the licensed club and the committee has no right to grant to a member permission to drink on the premises before or after licensed hours without applying for an extension from the magistrates. I shall be glad of your advice on the matter.

NINCO.

Answer.

Our correspondent's letter deals largely with questions of fact, only possible to be determined in a prosecution. It seems, *prima facie*, that the whole premises occupied by, and used for the purposes of, the club constitute "the premises of a registered club" as this phrase is used in s. 100 of the Licensing Act, 1953 ; *cf. Stevens* v. *Dickson and Another* (1952) 116 J.P. 439. Therefore, we think that a charge of consuming intoxicating liquor outside permitted hours would not be dismissed on the ground that the part of the club premises in which consumption took place was not "the premises of a registered club" within the meaning of the section.

13.—Magistrates—*Practice and procedure—Appeal to quarter sessions—Is the appeal a new trial ?*

Would you care to express an opinion on the procedure of the quarter sessions appeal courts in an appeal against conviction ? As you know, an appeal against conviction to quarter sessions consists of a complete rehearing of the case, but, from remarks passed from time to time, by chairmen of appeal committees and recorders sitting as a court of appeal, it seems clear that often they regard it as a completely *new trial*. I do not know of any statute which lays down under what circumstances the quarter sessions appeal court shall allow an appeal against conviction, and having regard to this, I should have thought they would have taken an example from the Court of Criminal Appeal. As you know, by s. 4 of the Criminal Appeal Act, 1907, the Court of Criminal Appeal may allow an appeal against conviction on the grounds (1) that the conviction is unreasonable and cannot be supported having regard to the evidence ; (2) that the conviction should be set aside on the grounds of a wrong decision on a question of law ; and (3) that there has been a miscarriage of justice. In any other case the appeal shall be dismissed.

What I should like your opinion on, is :

1. Are the appeal courts of quarter sessions right in regarding an appeal against conviction as a completely new trial and thereby, from the outset, virtually setting aside the verdict of the magistrates ?

2. Should not the quarter sessions appeal courts take note of the powers of the Court of Criminal Appeal, as laid down in s. 4 of the Criminal Appeal Act, 1907, and copy their example ?

Y. NOSRAM.

Answer.

1. Quarter sessions are right in regarding an appeal against conviction as a completely new trial.

Halsbury (2nd edn.) vol. 21, p. 715, says, "After preliminary points are dealt with, the hearing of the matter is proceeded with, the party who began in the court below, beginning again

and proving his case *de novo*. Either party is within his right in calling any relevant and admissible evidence in support of his case, whether called by him in the court below or not."

In *Fulham Metropolitan Borough Council* v. *Santilli* (1933) 97 J.P. 174, Humphreys, J., said, "It is a matter of common knowledge and a matter which is entirely beyond dispute in an ordinary case, that a right of appeal to a judicial tribunal on questions of fact is a right to have a rehearing of the whole matter."

2. The Criminal Appeal Act, 1907, regulates appeals by persons convicted on indictment to the Court of Criminal Appeal, and has no application to appeals to quarter sessions in summary cases. The powers of quarter sessions on the hearing of an appeal are governed by s. 31 of the Summary Jurisdiction Act, 1879, as it now stands, and it is to that section they should look, and not at all to s. 4 of the Criminal Appeal Act, 1907.

14.—Public Health Act, 1936, ss. 39 and 42—*Connecting private sewer to main sewerage system—Council willing to pay half cost.*

The council have recently replaced an old "barrel drain" (a public sewer) with a modern sewerage system. Some properties were connected to the old barrel drain, some had cesspools or septic tanks and others had no drainage.

Premises which had drainage whether efficient or not, are being connected to the new public sewer at the council's expense under s. 42 of the Public Health Act, 1936, or because of *St. Martin's-in-the-Fields Vestry* v. *Ward* (1897) 61 J.P. 19.

In part of the village, however, there is a small private estate, each property being separately owned. All the properties have been erected in the last 10 years. The public sewer has been laid in the main road at the end of the private road. Each property on the estate has its own cesspit or septic tank. It is common ground that all the cesspits or septic tanks are inefficient and are probably prejudicial to health.

The council are willing to pay 50 *per cent.* of the cost of constructing a private sewer to the properties in question and the costs of connexion.

I shall be glad to have your views bearing in mind s. 39 of the Public Health Act, 1936.

PORIDA.

Answer.

The authority may proceed under s. 39 or under s. 42 but they cannot use their powers under both sections together. If notices can be properly served under s. 39 an agreement on the terms proposed could be entered into under s. 275 of the Act of 1936.

15—Road Traffic Acts—*Dangerous and "careless" driving—No charge of dangerous driving—Charge of "careless" driving dismissed on ground that court considered that dangerous driving, but not "careless" driving, was proved.*

The note at 121 J.P.N. 301–2 under the heading "Dangerous Driving—a Question of Fact" gives valuable guidance to justices and clerks, but there is a further point on which I should like an opinion.

A person was recently charged with "*careless* driving" only. The justices took the view that on the evidence the offence committed clearly amounted to "dangerous" driving and not "careless" driving. The justices dismissed the charge for "careless" driving. They would have convicted the offender if the charge had been one of "dangerous" driving but there being no such charge before the court the offender, who obviously merited punishment, was let off "scot-free." Your opinion on the question of whether the justices acted properly or otherwise will be appreciated.

If their decision was correct would it have been possible for them to re-hear the case on a fresh information for "dangerous" driving?

In the note referred to, it is said that the court was certainly not going to attempt to lay down what "dangerous" driving was. Is it possible that although "careless" driving may not be "dangerous" driving, dangerous driving can in some circumstances amount to careless driving?

J. BERPAT.

Answer.

The offence under s. 12 of the Act of 1930 is not "careless driving," it is either driving without due care and attention or driving without reasonable consideration for other persons using the road. The exact offence must be specified. We do not know the facts of this case and we do not know which of the two offences created by s. 12 was charged, but we think that there can be very few cases in which a person who is driving dangerously can be said to be driving with *due* care and in many cases he is certainly not driving with reasonable consideration for other persons using the road.

We do not think that the defendant can now be prosecuted again, on the same facts, for dangerous driving: *Wemyss* v. *Hopkins* (1875) 39 J.P. 389 is in point.

As indicated above, in our view dangerous driving in almost all, if not all, circumstances must involve driving without *due* care and in many cases to driving without reasonable consideration for other persons using the road.

16.—Road Traffic Acts—*General trade licence—Vehicle used without the appropriate plates fixed—What offence?*

A limited company hold a current general trade licence in respect of all their vehicles. An employee used a vehicle of the company for an authorized and proper journey (under this licence) but omitted to comply with r. 29 (B) (4) in that the company inadvertently omitted to fix the appropriate plates (which were not put to other use) to the vehicle before the employee set out on his journey. The vehicle was not otherwise licensed.

The police (under authority) have issued a summons against the company under s. 15 (1) of the 1949 Act for using the vehicle on this journey without a current excise licence in force. It is argued, on the one hand, that, by not using and displaying the general trade licence on the journey the vehicle ought to have been otherwise licensed. On the other hand, it is argued that the vehicle was licensed by virtue of the general trade licence and any summons ought to be for a contravention of r. 29 (B) (4) under s. 25 (4) of the 1949 Act. Will you please advise whether, if the above facts are established, an offence under s. 15 (1) of the 1949 Act is established?

S. SILVER.

Answer.

Assuming the facts as given in the question we do not think that a summons under s. 15 (1) of the Act of 1949 is appropriate because a licence under the Act, *i.e.*, the licence issued by virtue of s. 10 of the Act and r. 29, is in force for that vehicle.

We think that the offence which was committed was one of failing to comply with the requirements of r. 29 (B) (4).

17.—Town Police Clauses Act, 1847, s. 28—*Obstruction of footway—Merchandize.*

My council have received a report, with witnesses' statements, concerning an incident which occurred in the main shopping street of the town. A firm of traders, despite representations made to them by police officers on the subject, habitually place goods for sale on the pavement, usually in crates and boxes. It appears that the incident mentioned above resulted in some injuries to a small child. Although the police report has been made under s. 72 of the Highway Act, 1835, the police consider that the circumstances of the case show that danger was actually caused to a pedestrian and are more adequately covered by s. 28 of the Town Police Clauses Act, 1847. The police also express the view that it would be more appropriate for the council to undertake the prosecution.

I shall be obliged if you will comment on the last-mentioned point.

I am informed that on a number of occasions when police officers have warned the persons in charge of this particular shop about using part of the highway for the display of goods, a claim has been made that the firm are "entitled to use up to 18 *in.* of the pavement outside the shop for this purpose."

I am at a loss to know the source of this idea. The physical circumstances of the premises in relation to the highway are quite clear. There is no forecourt to the shop premises, the frontage boundary of which abuts upon the back edge of the pavement, the latter being part of a classified highway.

PARLIS.

Answer.

Proceedings may be taken under the Highway Act, 1835, s. 72, but as s. 28 of the Town Police Clauses Act, 1847, specifically refers to the placing of merchandize on the footway that section would be more appropriate. Proceedings must be taken by the council, because of s. 253 of the Public Health Act, 1875. There is no basis in the general law for the claim to 18 *in.* mentioned in the query. We are told that this footway is part of the highway, and dedication subject to a right of placing goods thereon would have to be strictly proved by the defence: *see* the decisions cited in *Lumley's* note on this part of s. 28.

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